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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,540	05/12/2004	Kenneth A. Stanzel	ITW7510.060	3539
33647 7590 10/31/2007 ZIOLKOWSKI PATENT SOLUTIONS GROUP, SC (ITW) 136 S WISCONSIN ST PORT WASHINGTON, WI 53074			EXAMINER KERN, KEVIN P	
			ART UNIT 1793	PAPER NUMBER
			NOTIFICATION DATE 10/31/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/709,540	<b>Applicant(s)</b> STANZEL ET AL.	
	<b>Examiner</b> Kevin P. Kerns	<b>Art Unit</b> 1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 39-56 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 53-56 is/are allowed.
- 6) ☒ Claim(s) 39-44 and 49-52 is/are rejected.
- 7) ☒ Claim(s) 45-48 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 45 is objected to because of the following informalities: in the last line of the claim, replace "adaptor" with "adapter" for agreement in spelling of this term in other claims. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 49-52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to independent claims 49 and 51, it is unclear what the limitations "immediately upon connection" (claim 49) and "upon connection" embody, as these limitations imply an "automatic" passage of gas (rather than "manual"). However, these limitations are interpreted to broadly include that gas is "capable of" being accessed upon attachment, which would be anticipated by the prior art (see prior art rejections).

Regarding claims 49-52, the phrase "or the like" (in this instance, the term "type") renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like", or "type"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d). The limitation "welding-type device" (claims 49-52) includes this indefinite term.

Importantly, the applicants are additionally referred to the MPEP as follows: MPEP 2173.05(b), under heading E. "Type" (MPEP page 2100-216 of August 2006, Revision 5) states "*The addition of the word "type" to an otherwise definite expression...extends the scope of the expression so as to render it indefinite*". *Ex parte Copenhaver*, 109 USPQ 188 (Bd. App. 1955).

In this instance, it is suggested to delete all instances of the term "type" to overcome the rejections under 35 USC 112, 2<sup>nd</sup> paragraph.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 39-44 and 49-52 are rejected under 35 U.S.C. 102(e) as being anticipated by Albrecht et al. (US 6,977,358).

Albrecht et al. disclose a portable welding apparatus with an integrated gas bottle (canister) and a method of its use in an arc welding process (providing a shielding gas while initiating a welding arc), in which the welding apparatus includes the following features: a wire feeder 52 (weld wire delivery system of Figures 3 and 4) comprising a central hub constructed to support a consumable weld wire 58; a wire feed drive

assembly (pair of drive rolls in front of the wire feeder 52 that is driven by a drive motor, but is incapable of generating welding power itself, via a cable (cord) constructed to connect the wire feeder to a welding power source means constructed to generate a welding power suitable for welding applications) that is operable to deliver the weld wire 58 to a weld; a "suitcase-type" housing 12 ("compact" enclosure that surrounds the power supply, and having a handle and a plurality of side panels, including connecting side shells in the form of cover 14 and door 28 to create an access opening in the housing 12, as shown in Figures 1 and 2) positioned about the hub and drive assembly to form a receptacle around the outlet of weld wire 58 and the wire feeder 52; a pressure vessel (in the form of a disposable and refillable gas cylinder canister 34, or "first means" for providing a shielding gas) arranged inside the housing 12 and at least partially supported in its neck region by the wire feeder 52, while extending at its (canister) base through opening 78 in the exterior of the housing 12 to provide support for the gas cylinder canister 34 (such that the gas cylinder 34 has a length, width, and depth smaller than corresponding dimensions of the housing 12 and is selectively attachable and removable along a longitudinal direction through support 46 and opening 78 in the housing 12); a flow regulator valve 68 snugly received within a recess (cavity) of the housing 12 and having a first adapter 66 that is fluidly attached to the outlet end 64 of pressure vessel 34 (also arranged above and supported by the wire feeder 52 located directly beneath the regulator 68) and constructed to allow passage of gas upon engagement of the pressure vessel 34 with the wire feeder 52, as "upon engagement" within a housing implies "automatic" engagement (in the form of an automatic "switch")

without disassembly of the housing to manually open a regulator (thus the regulator 68 of Albrecht et al. would necessarily be an "automatic" regulator to allow for access to gas of the pressure vessel "upon engagement", while also being in "snap-fitting" engagement, as first adapter 66 and outlet end 64 would necessarily be in "snap-fitting" engagement, including the connection itself and the latches (straps 70,72) that "snap" the gas cylinder 34 into position onto the support structures within the housing 12); a connector (shroud attached to the housing 12 in the form of supports 46 and 78) within the housing 12 being constructed to connect the wire feeder 52 to the gas cylinder 34 while supporting the pressure vessel 34; and an external (bulk) gas cylinder 96, or "second means" for providing a shielding gas (Figure 4) having a connector in the form of adapter 94, such that the external (bulk) gas cylinder 96 is at least partially attached to an exterior of the housing 12, in the form of attached inlet adapter 94 (or a "latch" when given the broadest reasonable interpretation of the term, which would broadly be considered as a "connector"), which is considered to be a "direct" mounting to the housing 12 (abstract; column 2, lines 1-36 and 59-67; column 3, lines 1-67; column 4, lines 1-67; column 5, lines 1-4 and 12-32; and Figures 1-4).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

***Allowable Subject Matter***

6. Claims 53-56 are allowed.
7. Claims 45-48 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
8. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fail to teach and/or suggest a shroud that further comprises a second recess connected to the first recess and constructed to snugly receive an adapter body therein (dependent claim 45; and independent claim 53).

***Response to Arguments***

9. The examiner acknowledges the applicants' pre-appeal brief review filed with a notice of appeal received by the USPTO on September 11, 2007. Upon discussion at a pre-appeal brief review conference conducted on September 19, 2007, it was determined that prosecution be reopened. As a result, all prior rejections based on DE 83 08 999.3, Gartland, and Andersen are withdrawn. Upon further review, new objections to claim 45, as well as new 35 USC 112, 2<sup>nd</sup> paragraph rejections, are raised in above sections 1-3. Allowable subject matter remains unchanged (see above sections 6-8). Claims 39-56 remain under consideration in the application.
10. Applicants' arguments with respect to claims 39-44 and 49-52 have been considered but are moot in view of the new ground(s) of rejection.

**Conclusion**

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Kevin P. Kerns whose telephone number is (571) 272-1178. The examiner can normally be reached on Monday-Friday from 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jonathan Johnson can be reached on (571) 272-1177. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kevin P. Kerns *Kevin Kerns 10/25/07*  
Primary Examiner  
Art Unit 1793

*KPK*  
kpk  
October 25, 2007